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The Digital Rear Window: Epistemologies of Digital Transparency

Ida Koivisto*

Abstract

In this essay, I discuss digital reality production and transparency's role in it. I argue that the promise of transparency—the visual access to objective reality which further enables necessary democratic action—is jeopardized in the digital environment. I analyze some of the reasons for this. First, transparency is no longer an issue that is clearly defined by law, and it increasingly works as an ambiguous normative concept. As such, its scope is unclear. Second, the structural qualities of transparency as a metaphor and as a medium reveal the limits of transparency to portray reality on a theoretical level. Third, the way in which transparency discourse participates in digital reality production makes it even more difficult to decipher the "ground truth," if indeed, there is one. Because digital transparency builds on a twofold mediation of reality—transparency as a medium itself and algorithms as a medium of digital transparency—seeing with one's own eyes no longer guarantees a privileged access to reality. I conclude that although transparency is traditionally seen as one of the best tools of democracy, along with the emergence of individualized digital realities and the decline of a shared understanding of truth, the truth-transparency nexus may be unraveling.

I. Introduction: From Touch to Trust

I started work on this essay in the spring of 2020, as the first wave of the COVID-19 pandemic was peaking. I was in Toronto, stuck on the upper floors of a downtown high-rise as the city locked down. The rear wall of the apartment was made entirely of glass, from floor to ceiling. Like in Hitchcock's famous movie, I ended up spending an inordinate amount of time looking through that extensive rear window. I saw massive skyscrapers and people walking around down in the streets below, the size of ants. Sometimes a man would speed walk back and forth on a balcony across from me, trying to get his daily exercise in the safety of his home.

I started questioning the tiny figures on the street. Why were those youngsters hanging out together? Why was that woman not keeping a safe distance while walking her dog? Along with the lockdown, my ability to reach firsthand knowledge about the world was suddenly restricted. During this pandemic, people are advised to avoid touching things with their bare hands, as it is impossible to know on which surface the virus is lurking. In

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that way, firsthand knowledge becomes not only insufficient but also downright dangerous. The epistemology of seeing has more and more weight.[1] It also starts to replace the epistemology of touch.

In addition to watching the world from the window, I spent my time with screens. Most days my body had extensions: a mobile phone, a tablet or a laptop. In a way, media have always implied some form of "artificial extension of the human senses."[2] They help us to stay informed beyond our immediate sensorium. In those first months of the pandemic, I overindulged myself with news. How many new deaths? What kind of new restrictions to our fundamental rights, mobility, and consumption? In the apartment, the view of the world from my electronic devices was closer, more nuanced, more "real" than the view through those giant panes of glass overlooking Cumberland Street.

In this setting, the digital reality has become, largely, a substitute for, if not a translation of, analog life. While my quarantine is protecting my body, my perception of and contribution to this world have become two-dimensional. The more I isolate myself from the physical world, the more I immerse myself in the digital one. This exceptional life is a-physical and a-haptic: it is hyper-visual, hyper-digital, hyper-real. Guy Debord's thesis from 1967 sounds uncannily prophetic: "All that once was directly lived has become mere representation."[3] In fact, people share "views from my window" in a designated Facebook group, and use the "window swap" service, in which one can open a digital window around the world.[4]

The mediated nature of information is nothing new *per se*. The very emergence of mass media poses similar questions of the trustworthiness of the intermediary. Although the pandemic has not caused the current megatrends of datafication and digitalization, it has brought these themes to the forefront in a dramatic way.[5] As my freedom is abruptly restricted, my independent deliberation on what to do is similarly restricted. To stay safe, people need to cooperate and trust the authorities. They tell us what to do, but on which grounds—are they transparent? As citizens and subjects of the instructions, can we oversee the assumptions on which the government bases its policies?

Like looking through the rear window, transparency promises a clear vision of reality. In this essay, I discuss the digital translation of the window. The core question is whether transparency can provide an avenue to objective truth in an environment that is

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[1] Andrea Brighenti, Visibility: A Category for the Social Sciences, 55 Current Soc. 323 (2007).

[2] Konstantin Nicholas Dörr, Mapping the Field of Algorithmic Journalism, 4 Digital Journalism 700 (2016); Paul Hodkinson, Media, Culture, and Society: An Introduction 19 (2d ed. 2017); European Broadcasting Union, News Report 2019—The Next Newsroom: Unlocking the Power of AI for Public Service Journalism, Nov. 19, 2019 (https://www.ebu.ch/publications/strategic/login_only/report/news-report-2019).

[3] Guy Debord, Society of the Spectacle 10 (1970) (1967); see also Mikkel Flyverbom & Juliane Reinecke, The Spectacle and Organization Studies, 38 Org. Stud. 1625 (2017).

[4] WindowSwap (https://window-swap.com/).

[5] See Verónica Donoso et al., Report on Interviews with Experts on Digital Skills in Schools and on the Labour Market, Aug. 31, 2020 (https://yskills.eu/).

algorithmically produced and relies increasingly on individualized information.[6] To answer that question, I approach transparency as a socio-legal ideal that has spread to a new habitat: it has become a question of digital reality production.[7] The transparency vocabulary has found its way into phenomena such as social media, algorithms, automated decision-making, and artificial intelligence.[8]

As this digital reality production cannot but be algorithmically governed, it poses new questions. How do algorithms mediate reality, how are they designed, in what ways are they visible, and what are their effects? We have entered the era of algorithmic governmentality, which blurs the traditional power relations and gives few outlets for resistance.[9] I argue that besides being a medium in the first place, as a digital translation, transparency adopts another layer of mediation. It manages the relationship between the viewer and the object, and the governor and the governed, in increasingly complex ways.

Despite the many merits attributed to transparency, I argue that in the digital environment, transparency's potential to fulfill its promise has two important caveats. First, transparency has structural impediments. In the digitalized world, immediate visibility is but a useful fiction. We want firsthand knowledge through an avenue that can only provide secondhand knowledge. What is a neutral, objective, undistorted reality in the digital world when everything is necessarily mediated through gate-keeping algorithms? Second, in the wake of surveillance capitalism, we are pushed toward solipsistic realities. At the same time, we need to trust the authorities perhaps more than ever and cooperate with each other. How can we handle this? In this essay, I analyze that promise of transparency and those caveats more closely.

The essay is organized as follows. In the second section, I delve into the promise of transparency and the first caveat. I discuss transparency as a traveling normative idea (meme), and its promise as a neutral medium: can we access the "real thing" through transparency? The answer is no. This, in turn, leads to a discussion on transparency's *iconoambivalent* nature and concomitant chagrin over mediation. In the third section, I concentrate on the second caveat. I argue that our digital life in bubbles alters the way in which we present ourselves online. This connects with our nature as information recipients and the "users" of transparency. If social reality becomes fragmented, what happens to democracy? In the fourth section, I bring these themes together. I argue that transparency is not a neutral

[6] Cf. Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (2015).

[7] Mikkel Flyverbom, The Digital Prism: Transparency and Managed Visibilities in a Datafied World 11 (2019).

[8] See, e.g., On Artificial Intelligence: A European Approach to Excellence and Trust, EU Commission (2020) (https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-65-F1-EN-MAIN-PART-1.PDF).

[9] Thomas Berns, Not Individuals, Relations: What Transparency Is Really About—A Theory of Algorithmic Governmentality, in Transparency, Society and Subjectivity 243 (Emmanuel Alloa & Dieter Thomä eds., 2018).

messenger of digital reality: the more our reality is algorithmically constructed, the less likely the assumed transparency-truth nexus will survive. Lastly, I provide a short conclusion.

II. Tackling Transparency

A. The Transparency Meme

In an age of the pandemic, the main goal of transparency—trust—has become a question of life and death. The more we, the subjects of government instructions, can trust government-produced and -distributed facts and numbers, the more confident we can be about what to do. The availability of reliable information is not self-evident, as misinformation is overflowing on the Internet.[10] Should we wear masks? How long should we wash our hands for? The more we trust, the more confident and likely we are to obey the given instructions.

Today, we have access to more information than anyone could have ever dreamt of just a couple of decades ago. As Bernard Harcourt explains, sometimes our time is described as one that creates access to truth.[11] Data mining and artificial intelligence would allow us to know when epidemics arise, when crime occurs, and what we like to consume. Has this abundance of easily accessible information left us with a clear view of reality? Hardly. Even if information is available, it is often highly specialized, and most of us lack the expertise to assess its reliability. Thus, rather than truth, these forms of data collection constitute a new form of power—power that is based on new constellations of truth. Today, power circulates differently in society due to the digitalization of our information.

We call for transparency: reliable, understandable information on what is happening and how we should behave. Transparency and trust are often assumed to form a causal relation: if there is transparency, trust will follow. That is why it is hard to notice that, in fact, transparency is the antonym of trust. As Byung-Chul Han has put it, "Trust is only possible in a state between knowing and not knowing."[12] If we know what is happening, trust becomes futile, if not impossible. With the help of transparency, we can see with our own eyes. This is the premise and promise of transparency: (governmental) power is legitimate so long as we, citizens in democracy, can see how it is used, and keep it in check. If we do not like what we see, we the governed may even overthrow the governor.

Perhaps due to the very normative attraction of the transparency metaphor, today transparency talk is ubiquitous. It seems to be something more than a synonym for access to information or freedom of information legislation. Only over the last couple of decades

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[10] Md Saiful Islam et al., COVID-19–Related Infodemic and Its Impact on Public Health: A Global Social Media Analysis, Am. J. Tropical Med. & Hygiene 1 (2020). The authors show how as much as 82% of pandemic information distributed in social media is false.

[11] Bernard Harcourt, Virtual Transparency: From the Panopticon to the Expository Society and Beyond, in Transparency, Society and Subjectivity 378 (Emmanuel Alloa & Dieter Thomä eds., 2018); see also Julie E. Cohen, Between Truth and Power: The Legal Constructions of Informational Capitalism (2019).

[12] Byung-Chul Han, The Transparency Society (2015).

has transparency become an unquestionable value, taking victory over confidentiality.[13] Besides its long roots in political philosophy and public law, transparency as an idea has become a meme—in Richard Dawkins's and others' sense[14]—an attractive idea that spreads through imitation. For example, a public institution or a firm lacking a transparency declaration, strategy, or policy would easily create an image that it has something to hide. Conversely, many institutions have caught the transparency meme. The transparency meme encourages producing and disseminating information. It couples the ideas of seeing clearly with being informed.[15]

Hence, like looking through our apartment window, we need to have a window on governance and power, a neutral messenger of reality. This concrete idea of a window also makes transparency understandable to us as a metaphor: we need no explanations when we can witness reality with our own eyes. In this way, the goal of government legitimacy—and the legitimacy of power more generally—utilizes the rationality of truth. Thus, transparency as a concept evokes mostly positive associations. By contrast, "a lack of transparency" sounds ominous and condemnable in contemporary language. Transparency has gained an almost mythical status in modern society. It entails a covert "pro" attitude toward it, even when no particular assets are attributed to it. We approach transparency as a normative concept.[16]

B. Is Transparency a Neutral Medium?

The discourses of law and policy do not typically problematize transparency. Instead, it is seen as a tool for combating unwarranted secrecy, mismanagement, and cover-ups. In media, cultural, and communication studies, however, the phenomenon of transparency is reviewed more critically, and as a part of our societal and cultural condition more widely. These approaches—also a point of departure in this essay—emphasize questions of mediation, modes of representation, the metaphorical meanings of transparency, and its visual implications. Instead of a neutral medium, transparency is thus considered an ambivalent concept which is closely connected to the way in which we experience reality and truth.[17] To clarify this point, it is helpful to take a brief look at some critical views in the literature.

Clare Birchall voices well the idea of transparency as an inconspicuous medium:

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[13] Emmanuel Alloa, Transparency: A Magic Concept of Modernity, in Transparency, Society and Subjectivity 21 (Emmanuel Alloa & Dieter Thomä eds., 2018).

[14] Richard Dawkins originally coined the term in his book The Selfish Gene (1976).

[15] Taina Bucher, If . . . Then: Algorithmic Power and Politics 43 (2018).

[16] Ida Koivisto, The Anatomy of Transparency: The Concept and its Multifarious Implications, EUI Working Papers MWP 9 (2016).

[17] Stefan Berger & Dimitrij Owetschkin, Contested Transparencies: An Introduction, in Contested Transparencies, Social Movements and the Public Sphere: Multi-Disciplinary Perspectives 1 (Stefan Berger & Dimitrij Owetschkin eds., 2019).

> [T]ransparency . . . is an invisible discourse because its mediation is obscured by its status as a cultural signifier of neutrality. It is seen as not having a particular quality in and of itself but as, rather, merely the invisible medium through which content is brought to our attention, into the visible realm.[18]

In a corresponding way, Emmanuel Alloa states, "[T]ransparency symbolizes a medium without qualities, a cultural signifier which stands for the absence of any form of symbolic or non-symbolic intervention."[19] Transparency is "mediated immediacy."[20]

Indeed, it is not always easy to observe the way in which media represent their objects, or whether a medium can be seen as a medium at all.[21] As Mattijs Van de Port argues, a mirror, for example, is difficult to categorize in this respect:

> Responding to [photographs and portraits] by saying something like "that is not a flattering photograph of me" or "the likeness of the portrait is striking" is perfectly possible. Not so with one's mirror image: it makes no sense to say that one's mirror image is "not very flattering" or "absolutely striking." What's more, it is very difficult to conceive of one's mirror image as an image at all. Just go to the nearest mirror and try for yourself: you will not succeed to look at your face *as if* it were an image. All that you will see is you yourself.[22]

Yet a mirror image is exactly that: an image, it is two-dimensional and necessarily reflects the qualities of the medium. For example, we easily fail to notice that the mirror image is inverted along its vertical axis.[23] A mirror image inevitably reflects the characteristics of a mirror as a medium. Similarly, transparency promises to be a disinterested messenger between the "real thing" or the "thing in itself" and its representation. We do not say: "This thing is accurately delivered through transparency." No, we assume that transparency creates direct access to its object, the real thing. As we do not look at a mirror itself but the image it reflects, we are not supposed to look at transparency itself, but through it, at the scenery it helps us see.[24]

If we approach transparency as a medium like this, we need to be alert: although media tend not to draw attention to themselves, they are not invisible, harmless or automatically objective. In the digital environment the "medium-ness" of media may be even harder to detect. Media necessarily curate and select the things we experience and how we experience them. As Mikkel Flyverbom argues, we increasingly rely on opaque and automated forms of editing and sorting that require critical discussions about media and

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[18] Clare Birchall, Radical Transparency?, 14 Cultural Stud. & Critical Methodologies 77, 81-82 (2014).

[19] Alloa, supra note 13, at 37.

[20] Id. at 36.

[21] On transparency as a literal medium, see Colin Rowe & Robert Slutzky, Transparency: Literal and Phenomenal, 8 Perspecta 45 (1963).

[22] Mattijs Van de Port, (Not) Made by the Human Hand: Media Consciousness and Immediacy in the Cultural Production of the Real, 19 Soc. Anthro. 74, 76-78 (2011).

[23] Patrick Stokes, Kierkegaard's Mirrors: The Immediacy of Moral Vision, 50 Inquiry 70, 77 (2007).

[24] Richard K. Sherwin, Visualizing Law in the Age of the Digital Baroque: Arabesques and Entanglements 84 (2011).

information. Like newspaper editors in the past, algorithms select and curate information. This cannot but have social and cultural consequences.[25]

The fact that we may not pay attention to the medium does not mean that we could not see it if we knew how to look. Obviously, we can see a mirror or a window. Additionally, we can see the rules governing the representation of a medium in an even more abstract way. For example, we recognize the breach of the norms of TV as a medium when the so-called fourth wall is broken, and the actor addresses the viewer. By this very violation of the norm—a norm we did not necessarily know that we knew[26]—the peculiarity of that medium may become apparent. When it comes to content curation through algorithms, however, the medium is more difficult to detect. We do not always even know that we do not know. This difficulty becomes conversely visible in the demands of transparency.

Thus, a medium implies the conscious showing or constructing of its object: it implies selection, highlighting, and omission, following the conventions of that medium. It may also alter the very nature of the object shown:[27] when we see with the aid of a tool, the tool becomes part of what we see. Is the medium, as Marshall McLuhan famously coined it, ultimately the message?[28] If we approach transparency as a medium and take that idea seriously, we must concede that transparency is not neutral. This leads us to ask: how does transparency as a medium allow us to see its object when it comes to things such as governance or power?[29] In Martin Jay's words, how can we make abstractions visible?[30]

C. The Troubling Transparency of Abstractions

As argued, contemporary legal and policy discourses frame questions of epistemology and phenomenology with the vocabulary of transparency. Transparency is believed to let us access reality if not the truth itself. To that end, it is important to point out that transparency functions in two registers of abstraction. It refers to the visual organization of seeing through (signified1), the literal meaning of seeing through (signifier1), and transparency as a metaphor (signifier2) for access to reliable information (signified2).

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[25] Flyverbom, supra note 7, at 39.

[26] Cf. Bucher, supra note 15, at 42-46 (discussing known unknowns).

[27] Mark Fenster, Transparency in Search of a Theory, 18 Eur. J. Soc. Theory 150 (2015).

[28] Marshall McLuhan, Understanding Media: The Extensions of a Man 7 (1964). Critically, Jean Baudrillard, Simulation and Simulacra 33 (1994):

> The medium itself is no longer identifiable as such, and the confusion of the medium and the message (McLuhan) is the first great formula of this new era. There is no longer a medium in the literal sense: it is now intangible, diffused, and diffracted in the real, and one can no longer even say that the medium is altered by it.

See also Riikka Koulu, Law, Technology and Dispute Resolution: Privatisation of Coercion 43-46 (2019).

[29] Cf. Mikkel Flyverbom, Transparency: Mediation and the Management of Visibilities, 10 Int'l J. Comm. 110 (2016).

[30] Martin Jay, Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought 95 (1993).

These different registers of abstraction work as the foundation of transparency as mediated immediacy. In the context of governance, I have conceptualized this mediated immediacy or the visibility of abstractions in the following way. As an ideal, transparency is an *icono-ambivalent* phenomenon. I mean that transparency is simultaneously both suspicious of images or other consciously created representations and reliant on them. I explain what that means.[31]

On the one hand, transparency is ideologically *iconoclastic*. It attempts to strip governance from all kinds of obfuscating veils: secrecy, appearances and concealment. It promises to allow governance itself to emerge in its pure essence before the eyes of the viewer. As Sandrine Baume and Yannis Papadopoulos state, "[T]ransparency, viewed as the absence of a veil, not only denotes a lack of concealment but also connotes cleanliness and the desire to show things in their purity."[32] In that sense, this iconoclastic aspect is suspicious of mediation and craves for immediacy. Following this reasoning, the transcendence of governance, if you will, could take care of its own representation so long as the impediments blocking its visibility for the viewer were removed.

On the other hand, transparency is also *iconophilic*, and necessarily so. If iconoclasm is the ideological aspect of transparency, iconophily is its unescapable practicality. In many cases, there is nothing to show, to emerge, without conscious efforts and constructs. There is no spontaneous way for an abstraction to reveal itself. Instead, the mimicry of reality typically involves a conscious agent; images or other representations rarely emerge *ex nihilo,* out of thin air.[33] Therefore, transparency needs to rely on images, metonymically understood: illustrations, statistics, performances and reports, algorithms, etc.—conscious, constructed appearances, mostly falling into the category of *documents*. Ultimately, it needs to rely on people and their mimetic abilities, their capabilities to "capture" the essence of governance to communicate it to the public.

Those iconophilic constructs are thus forms by which governance manifests itself. It is debatable, whether it can have an appearance beyond those constructs. To quote Gary Watt:

> The image of a thing is usually contrasted with the thing itself; the image of a thing is said to be reflective, representative, reproductive or mimetic of the thing rather than identical to it. And yet the image of a thing can sometimes be the most reliable knowledge we have of the thing. Sometimes we lack the capacity to see the thing itself, because the thing itself is

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[31] Koivisto, supra note 16.

[32] Sandrine Baume & Yannis Papadopoulos, Transparency: From Bentham's Inventory of Virtuous Effects to Contemporary Evidence-Based Scepticism, 21 Critical Rev. Int'l Soc. & Pol. Phil. 169, 172 (2018).

[33] Cf. Hans Krause Hansen, Numerical Operations, Transparency Illusions and the Datafication of Governance, 18 Eur. J. Soc. Theory 203, 204 (2015). As Hansen argues, "[I]t is by means of signs we can represent people, objects and relationships, with implications for those who take the authority of the representations for granted and for those who contest it."

> too abstract or too profound or too remote. In such cases we might have to settle for a flame-cast shadow on the wall of the cave or an image reflected in a mirror in the dark.[34]

Thus, in order to appear, governance inevitably needs mediation, and this mediation takes the form of constructs. Governance is too abstract to appear as a thing in itself, or at least in its totality.

If this is the case, how do we know that these iconophilic representations are loyal to their unseen object? For example, are documents reliable representations of governance in all its messy reality? If the object indeed has no visual makeup to imitate, can we even talk about loyal imitation (mimesis) of the object at all? Following Richard Sherwin, it may be helpful to make a conceptual distinction between mimesis1 and mimesis2. Mimesis1 is the standard meaning of the concept, in the sense of "good images are accurate copies." For example, a photograph is a "good copy" of the appearance of the person depicted. In the case of governance, however, mimesis1 is hardly available. How does one make an accurate copy of an abstraction? One cannot, for example, take a photograph of power.

Hence, we also need mimesis2, which is a different approach to mimetic accuracy. Instead of making good copies of the real thing; the copy becomes *aniconic*. Because the real thing is an abstraction, mimesis2 attempts to portray a "good image" of an *idea* instead of a visual appearance.[35] In a way, mimesis2 is metaphorical imitation, *as if* making a copy instead of a copy proper.[36] If mimesis1 copies, mimesis2 attempts to perform, illustrate or otherwise communicate an idea rather than to make a good copy of the thing represented.

The icono-ambivalent nature of governance transparency thus means this: iconoclasm, on the one hand, and iconophily, on the other. This ambivalence is not innocent, but it results in a specific set of doubts. We can never be sure of the quantity and quality of mediation in transparency, for mediation derives from human capabilities and ultimately human motivations. When can we trust governance to take care of its own representation, when does it need iconophilic practices? When are we talking about mimesis1, when about mimesis2? When transparency is mediated, when is it immediate? How much—potentially self-serving—human distortion is at play in the representation?

These doubts resemble something that van de Port calls *the chagrin over mediation*, the discontent over the fact that mediation is "all we have" to render present the world of our imagination.[37] That is to say, our dependence on media seemingly prevents us from knowing

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[34] Gary Watt, Law Suits: Clothing as the Image of Law, in Visualizing Law and Authority: Essays on Legal Aesthetics 23 (Leif Dahlberg ed., 2012).

[35] Daniela Carpi, Crime Evidence: "Simulacres et Simulations"—Photography as Forensic Evidence, in Visualizing Law and Authority, supra note 34, at 253, 254. Not all images mimic reality in a concrete sense, but illustrate abstractions. These can be called "aniconic images." As Sherwin remarks, "Aniconic images may present themselves as visual, but they actually point toward the unseen. The authority of an aniconic image derives from an invisible source." Sherwin, supra note 24, at 16.

[36] Richard K. Sherwin, What Authorizes the Image? The Visual Economy of Post-Secular Jurisprudence, in Law and the Visual: Transitions and Transformations 334 (Desmond Manderson ed., 2017).

[37] Van de Port, supra note 22, at 74.

the real thing, and we are left with "reality hunger."[38] Paradoxically, as van de Port notices, the anthropological truism that realities are culturally constructed does not prevent people—even anthropologists—from behaving as though this were not the case.[39] Mediation thus always produces a fiction of premediated existence.[40] Seeking the truth beyond mediation seems to be a very human desire. By promising iconoclastic immediacy, the ideology of transparency utilizes this quest.

III. The Perils of Bubble Life

A. Who Are We Online? Digital Footprints, Digital Masks

Although the call for transparency is strong and contrasts discursively with things such as misinformation, fake news or alternative facts, there is another digital phenomenon that makes it hard for transparency to fulfill its promise: something I called previously the emergence of solipsistic—or hyper-individualized or insular—digital realities. The digital environment has not only added a layer to transparency's mediation, but it has also changed its beneficiaries. We have become subjects with a tailored digital sensorium. Thus, it is not clear what "the real thing" is, as its digital representation may differ from one digital bubble to another. Instead of "good copies" (mimesis1), are we encountering copies without an original, i.e., simulacra, as Jean Baudrillard has coined them?[41]

Our social digital life is an archipelago of intertwined monads. This life in bubbles is one of the corollaries of datafication and digitalization and their aggressive commercial use: the emergence of so-called surveillance capitalism. According to Shoshana Zuboff, surveillance capitalism is "[a] new economic order that claims human experience as free raw material for hidden commercial practices of extraction, prediction and sales."[42]

Surveillance capitalism grew from influential Internet companies (Google, Facebook, Apple, Amazon) having transformed into hegemonic powerhouses of data flows. It commodifies personal data and "behavioral surplus"—the users' Internet behavior and predictions made from it. Surveillance capitalism is ultimately based on a cold logic: "Google discovered that we are less valuable than others' bets on our future behavior. This changed everything."[43] When the services are free, paid by advertisement, the users are the product.[44]

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[38] David Shields, Reality Hunger: A Manifesto (2010) (cover page) ("Shields argues that our culture is obsessed with 'reality' precisely because we experience hardly any.")

[39] Van de Port, supra note 22, at 74.

[40] William Mazzarella, Culture, Globalization, Mediation, 33 Ann. Rev. Anthro. 357 (2004).

[41] Jean Baudrillard, Simulacra and Simulation (1994). The most daunting example of a simulacrum—or chimaera of a simulacrum and a good copy—is the deep fake video. It looks like truth; it could be true, yet it is not. How to distinguish truthful representations from simulacra in the digital environment?

[42] Shoshana Zuboff, The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power (2019).

[43] Id. at 93.

[44] Id. at 63-97.

This new logic of capitalism has taken over at a breakneck speed and at an unprecedented magnitude. That has had dramatic consequences. Companies are increasingly in the "reality business."[45] That is to say, they control how the world is portrayed to us on the Internet. They direct our attention and the things we consider valuable in life. They collect, mine, and process value from our life and life choices. In other words, these companies do not only follow what we are doing online, they also shape our realities and lives.[46]

On one hand, surveillance capitalism makes us unwillingly transparent before the tech companies: they know things about us we would not confess to anyone, they follow our stream of consciousness, which manifests as our Google searches. This leads to a situation in which these companies—as is proven in the case of Facebook—know us better than our spouses do.[47] Our likes, searches and purchases—our digital footprints—give out much information on who we are and what kind of information we are interested in.[48] In some sense, privacy, as we know it, is already dead. Bernard Harcourt talks about the emergence of the "expository society."[49]

We are subject to targeted advertisements and influencing of various kinds. The more data we give of ourselves online, the more it is reflected back to us in a more processed and commercially attractive form. Instead of looking out of a window, we are, metaphorically, in a mirror hall, receiving countless images of ourselves, many of which distort us in one way or another. These phenomena are often referred to as filter bubbles or echo chambers. We are pushed to be "more us" than we would, perhaps, like. In this way, we have less control over our impression—our social representation, that is—than we otherwise would.

On the other hand, given the mediated if not hyperreal quality of the digital environment, new presentations and impression management techniques are available to us. Harcourt explains that the transparency we encounter in the digital age is neither literal—in a sense of a transparent object—nor entirely phenomenal, but virtual. The digital medium distorts the presentation of others and ourselves. It helps—possibly also forces—us to emphasize certain characteristics or desires, or to see some things better than others. We can create new profiles, pseudonyms and avatars, and on many occasions, we can control how we are portrayed to our peers, if not to the tech companies: we can be better versions of ourselves, or even entirely different people.[50] We wear digital masks, and tell digital

[45] Id. at 197-231.

[46] Flyverbom, supra note 7, at 41.

[47] Wu Youyou et al., Computer-Based Personality Judgments Are More Accurate Than Those Made by Humans, 112 Proc. Nat'l Acad. Sci. 1036 (2015).

[48] Zuboff, supra note 42, at 63-97.

[49] Bernard Harcourt, Exposed: Desire and Disobedience in the Digital Age 19 (2015).

[50] Harcourt, supra note 11, at 369, 380.

narratives of our lives, and in this way—at least seemingly—we have more freedom to choose who we are.

This duality of our online visibility—both leaked through our digital footprints and carefully curated through digital masks—is a paradox: we are simultaneously pushed to be our most intimate selves to commercial powers and given more power to curate our online presence in our digital social life. This transformation also has radical consequences for the promise of transparency. If we approach transparency as an avenue to truth in the digital environment, our democratic system encounters assumptions it does not readily recognize. Digital infrastructures and processes of datafication have effects on power relations in a particular way. They shape what we see and know, and these visibilities further guide our attention and action.[51]

B. Bursting Bubbles? Truth and Democracy at Risk

The way in which our bubbles are formed is far from transparent to us. In many ways, we do live in a black box society, as Frank Pasquale has famously argued.[52] We do not understand how information is produced in the digital environment. To understand current digital transformations, we need to address these questions about visibilities and their relations to power and ordering.[53] How can different visibilities function in the digital environment? How can transparency be digital; in what way can it reach us? What kind of subjects does it make us?

Neoliberal individualism and surveillance capitalism both sell the same idea: we are unique individuals who have the right and the desire to lead the life that manifests our particular identities, values and potential.[54] We are, indeed, accustomed to the luxurious idea that our freedom of choice is virtually limitless, and we can increasingly customize our reality. In addition, our social—and digital—environment consists largely of like-minded people and the content they produce, which again is amplified by the technologies of surveillance capitalism.

For transparency to work for the greater good, there must be a shared understanding of reality. A life in bubbles, for one, is, by definition, insular, customized, and particular. We easily start to think that our particular socio-cultural bubble represents the world in its entirety. Worse yet, we may start to believe that we have a privileged access to reality, whereas others, with a very different digital reality but an equally unwavering belief in their privileged access to reality, must be mistaken. In consequence, rational discussion, based on a shared understanding of truth and facts, becomes jeopardized, and societal polarization follows. Democracy is at risk.

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[51] Flyverbom, supra note 7, at 43.

[52] Pasquale, supra note 6.

[53] Flyverbom, supra note 7, at 43.

[54] Cf. Zuboff, supra note 42, at 37-41.

In the summer of 2019, well before the pandemic outbreak, the Pew Research Center and Elon University's Imagining the Internet Center canvassed technology experts for their views on democracy. The idea was to gain their insights about the potential future effects of people's use of technology on democracy. In total, 979 technology innovators, developers, business and policy leaders, researchers, and activists responded to the query.[55] The results were mixed. Some 49% of the respondents thought that the use of technology will mostly weaken core aspects of democracy and democratic representation in the next decade, while 33% thought the use of technology probably strengthened core aspects of democracy and democratic representation. Finally, 18% predicted no significant change in the next decade. It is noteworthy that almost half of the respondents were concerned. The main threats of democratic decline between 2020 and 2030 were attributed to the speed and scope of reality distortion, the decline of journalism, and the impact of surveillance capitalism. However, 33% of respondents who expected technology to strengthen democracy believed that reformers will find ways to fight back against chaos and info warriors.

According to the researchers behind the study, the logic of some answers follows this reasoning: the misuse of digital technology to manipulate and weaponize facts affects people's trust in institutions and each other. This further affects people's views about whether democratic processes and institutions are working.[56] This understandable suspicion further highlights the meaning of "trusted intermediaries." As David Pozen argues, the overabundance of data has made the role of these intermediaries all the more critical for public comprehension. Indeed, the rise of the filter bubble, fake news, trolling, flooding, and other pathologies associated with the Internet have come at a more fundamental price: exacerbated skepticism of expertise and truth itself.[57]

Let us look at this question through the example of the COVID-19 pandemic. It is obvious that combating the pandemic calls for a shared understanding of reality; to fight the virus, people need to step out from their bubbles and cooperate. Apart for those who belong to high-risk groups, the virus is astoundingly democratic—although there is evidence that it is, in fact, hitting poor and minority communities harder.[58] The pandemic has shown us that, however unique we think we are, we are more similar than different. We are incurably material beings. We all have a body. We all have a respiratory system that can be severely infected. We all may fall ill and die.

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[55] Janna Anderson & Lee Rainie, Many Tech Experts Say Digital Disruption Will Hurt Democracy, Pew Research Center, Feb. 21, 2020 (https://www.pewresearch.org/internet/2020/02/21/many-tech-experts-say-digital-disruption-will-hurt-democracy/).

[56] Id.

[57] David E. Pozen, Transparency's Ideological Drift, 128 Yale L.J. 100, 153 (2018); see also Flyverbom, supra note 7, at 34.

[58] See, e.g., Ed Pilkington & Ankita Rao, A Tale of Two New Yorks: Pandemic Lays Bare a City's Shocking Inequities, Guardian, Apr. 10, 2020 (https://www.theguardian.com/us-news/2020/apr/10/new-york-coronavirus-inequality-divide-two-cities).

Thus, depending on the information we have, our theoretical and practical possibilities to act on that information, and the trustworthiness of that information, we might not catch the virus. In this way, transparency, understood as access to a shared reality or the "ground truth," can become a matter of life or death. We need to have objective knowledge of the world; the virus does not succumb to alternative facts. Unlike "power" or "government," the virus is not an abstraction or a social construct. It works whether or not it is plausibly represented to us. Regardless of the reliability of transparency practices, the virus is real. It does not care for representation, legitimacy, or favorable impressions; it cares for survival.

How do we address the lives in a bubble in the face of a crisis, then? In Finland, for example, the government called upon social media influencers to spread the word about the government's COVID-19 measures. Many people who do not necessarily follow official news channels would still receive essential information through an avenue and in language they recognize, namely the people they look up to and listen to. This sounds optimal in many ways—would we not all want to be approached in way that considers our individuality? However, the premise of this strategy may be problematic. Although individualized truth may work well in some instances, there are also troubling counter-examples. The infamous Cambridge Analytica scandal showed how the techniques of surveillance capitalism might not only create but also manipulate and abuse individualized realities for political purposes.

Individualized information, however, is not all there is to digital reality. Our behavior online becomes a matter of digital reality productions, and those productions are further refined and fed back to us as individuals. Unless transparency also becomes customized, the perceived connection between truth and transparency may be unraveling. In David Shields's words, "in hunger for all things true, we make the facts irrelevant."[59]

IV. Transparency of What and How?

Today, , transparency discourse is perhaps stronger than ever. Transparency's connection to power has always been intimate—are we not demanding transparency of those using power over us? Subsequently, the proliferated "transparency talk" may be a symptom of new power configurations. That said, transparency is not ideal for keeping surveillance capitalism in check or delivering truth in the digital environment, for the reasons explained above. We are left with bafflement and suspicion about those in the "reality business" and crave access to reality without the business. What is the role of transparency in digital transparency, then?

The questions of digital transparency are ultimately questions of digital phenomenology: how does reality portray us in the digital environment? As I argued, when we talk about abstractions without a physical makeup to mimic, the representation becomes no less than the real thing: this is true in particular in the context of transparency as a

[59] Shields, supra note 38, at 86.

governance ideal (cf. iconophily). Is the entire call for reliable representation misguided then, when we talk about governance transparency? It seems that forfeiting transparency would mean a radical shift in how we think of legitimacy.

We need to ask why questions of access to reality are framed particularly as questions of transparency. In the digital environment, the demands of transparency have increasingly started to be a matter of reality-curating algorithms, the infamous "black boxes."[60] Less than attempts to share a common understanding of reality, transparency requirements are directed to the rules and design of bubble formation. By opening the black boxes, could we see clearly how our realities are produced?[61] To what extent is coding the main technology of algorithmic governmentality? Can transparency work in the form of a code "by design"?

The troubling question of the role of law lingers. As Rachel Adams argues, "Within both Zuboff and Pasquale's rendering of our information society and its forms of obfuscation, law plays an essential role in allowing the status quo to continue ad infinitum."[62] Although law is in many ways toothless in regulating digital reality production, some of the core issues relating to digital reality production have already been recognized in legal discourse. As it states in the Council of Europe's declaration, "Fine grained, sub-conscious, and personalized levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions."[63]

However, cognitive autonomy is a hard thing to protect with law. We are always surrounded by different stimuli which we interpret through our own lenses, regulated or not. We do not have access to total information or see things as they really are.[64] There is no technology to give us all the answers. Organizations, firms and people will continue to have secrets and disclose what they choose.[65] Technology cannot end transparency's inherent logics of self-presentation and icono-ambivalence, not to mention cure our own cognitive deficits.[66]

As Manfred Schneider argues, the "fly on a pane of glass" is Friedrich Nietzsche's image for the foolish attempts to "penetrate through" a thing through which we can see. In the contemporary discourses of transparency, this would mean that we are confusing data with reality and media with the world. Our fly brain leads us to believe that we can learn

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[60] Pasquale, supra note 6.

[61] Ida Koivisto, Thinking Inside the Box: The Promise and Boundaries of Transparency in Automated Decision-Making, Acad. Eur. L. Working Papers 1 (2020).

[62] Rachel Adams, Transparency: New Trajectories in Law (2020).

[63] Council of Europe, Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic Processes, Decl(13/02/2019)1 para. 9 (Feb. 13, 2019).

[64] Mike Ananny & Kate Crawford, Seeing Without Knowing: Limitations of the Transparency Ideal and Its Application to Algorithmic Accountability, 20 New Media & Soc'y 973 (2018).

[65] Flyverbom, supra note 7, at 15.

[66] Koivisto, supra note 16.

something about invisible processes thanks to data or figures. However, instead of receiving them, we are in them, like God particles.[67]

Regardless of its described flaws, transparency discourse has the potential to legitimize many things in the digital environment. That said, analog transparency might reinvent itself. There are weak signals that the far less fetishized feature of transparency's materiality, its haptic element, has become meaningful in the wake of the pandemic. Although we cannot see the virus like a fly on a pane of glass, transparency may start to function not only as an epistemological but also as a physical barrier between us and reality. Transparency's materiality never ceased one of its functioning mechanisms; it has just become impossible online.

In Toronto, as the days got longer, the dirtiness of the rear window became more obvious and distracting. I started to notice more the window itself and less the view it allowed me to see. In the adjacent shopping mall, I watched how employees disinfected shopping trolleys in the supermarket, wiping off the invisible threat. In a pharmacy, a clerk was serving me behind a plexiglass visor. I could not help but ponder this newly reinvented materiality of transparency. Not only was transparency letting us see, but it was preventing us from touching. Transparent materials allow us to see while stopping the spread of microscopic aerosols. In the physical world, I was trying to protect myself from an invisible yet material illness. In a digital world, I was trying to protect myself from misinformation and cope with my ignorance of what happens next. In both cases, transparency promised to work as an epistemological guarantee of a safe world.

V. Conclusion

In this essay, I have argued that the promise of transparency—the access to objective reality, which further enables necessary democratic action—is jeopardized in the digital environment. Although transparency is traditionally seen as one of the best tools of democracy, with the emergence of individualized digital realities and the decline of a shared understanding of truth, the truth-transparency nexus is unraveling.

As explained, the reasons for this are many. First, transparency is no longer an issue clearly defined by law, but it increasingly works as an ambiguous normative concept. As such, its scope is unclear. Second, the structural qualities of transparency as a metaphor and as a medium reveal the limits of transparency's ability to portray reality on a theoretical level. Third, the way in which transparency discourse participates in digital reality production makes it even more difficult to decipher the "ground truth," if indeed, there is one. In the future, it may become impossible to distinguish representation from simulacrum. Because digital transparency builds on a twofold mediation of reality—transparency as a medium itself and algorithms as a medium of digital transparency—seeing with one's own eyes no longer guarantees a privileged access to reality. The chagrin over mediation may get worse.

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[67] Manfred Schneider, The Fly on the Pane of Glass: Paradoxes of Transparency, in Contested Transparencies, Social Movements and the Public Sphere: Multi-Disciplinary Perspectives 55, 59 (Stefan Berger & Dimitrij Owetschkin eds., 2019).

Nonetheless, the emergence and problems of hyperreality have not ended problems of the material reality beyond screens. As exemplified in this essay, though invisible to most, the SARS-CoV-2 virus is not like power or government: it is material and not an abstraction, a social construct nor a flame-cast shadow. Transparency struggles to address invisibilities in general and material invisibilities especially. Our immediate material reality and the mediated-if-not-simulated perception of it cannot be bifurcated too much. Otherwise, the material, yet invisible, threat wins.